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IN THE

Supreme Court of the United States

October Term, 1955

Nos. 567 and 568

CHARLES H. ALBERS, FRANCES M. BLAKELY, C. W. BODEN, AVERY BRUNDAGE, JOHN KATSULOS, MARGARET L. KENT, PAUL E. KLING, THOMAS B. SHEARMAN, JAMES SULLIVAN AND EDITH WESTERCAMP, OWNERS OF CERTAIN SHARES OF NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY; MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL BONDHOLDERS COMMITTEE; AND BOLTON SULLIVAN AND STEWARD HUSTON, INDEPENDENT DIRECTORS OF MISSOURI PACIFIC RAILROAD COMPANY,
Petitioners,

v.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, ET AL.,
Respondents.

BRIEF OF MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Dated: December 21, 1955

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Opinions Below.

The opinion of the District Court (R. Vol. V, p. 251) is reported at 129 F. Supp. 392 (E.D. Mo. E.D. 1955). The opinion of the Court of Appeals for the Eighth Circuit (R. Vol. VI) is reported at 225 F. 2d 761 (8th Cir. 1955).

The Seventh and Eighth Supplemental Reports of the Interstate Commerce Commission (R. Vol. V, pp. 105, 238) are reported at 290 ICC 477, 674.

Jurisdiction.

The jurisdictional requisites are set forth in the Petitions.

Questions Presented.

The basic question presented by the petitioners herein is whether the Plan complies with legal requirements.

The petitioners contend:

(i) that the Plan was not initiated by the carriers to be merged (Serial Committee and Independent Directors pet. p. 2; Albers, et al pet. pp. 2-3);

(ii) that carriers can initiate mergers only by a favorable vote of stockholders pursuant to applicable state law (Albers, et al pet. pp. 2-3); and

(iii) that the Plan must be submitted to stockholders for a vote under Section 5(11) of the Interstate Commerce Act (Serial Committee and Independent Directors pet. p. 2; Albers, et al pet. pp. 2-3).

The Independent Directors also raise the question as to whether they are entitled to recognition as parties in interest to these proceedings (pet. p. 4).[1]

Statutes Involved.

The pertinent provisions of Section 77 of the Bankruptcy Act and Section 5 of the Interstate Commerce Act are set forth in the Petition of the Serial Committee and the Independent Directors at pp. 5-7.

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[1] This question is fully answered in the opinion of the Court of Appeals, 225 F. 2d 761, 764.

Argument.

The Petitions for Writ of Certiorari are founded on the decision of this Court in *St. Joe Paper Company, et al* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298 (1954). That decision is not applicable here. There are at least four fundamental factual differences, any one of which distinguishes this case from the *St. Joe* case.

First, the Plan of Reorganization for the Missouri Pacific was initiated by the Debtor railroad company through the efforts of its officers.[2]

Second, the stipulation and agreement constituting the Agreed Plan was signed by the Chairman of the Board of the Debtor pursuant to authority granted by the Executive Committee of the Debtor and ratified and approved by resolution of its Board of Directors.[3] The Agreed Plan was submitted to and approved by the Commission and is embodied in the present Plan of Reorganization. When the Plan was submitted to security holders by the Interstate Commerce Commission, 95% of the preferred stockholders voting and 99.6% of the common stockholders voting approved the Plan.[4] It is thus apparent that no involuntary or compulsory merger is being crammed down the Debtor as was true in the *St. Joe* case.[5] The proposal was initiated by the Debtor through its own voluntary action and can in no sense be regarded as a merger forced upon the Debtor in the process of a reorganization.

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[2] Eighth Supplemental Report of the Commission, 290 ICC 674, 681, et seq.

[3] R. Vol. I-A, Ex. 14.

[4] Serial Committee and Independent Directors pet. p. 71.

[5] In the light of Debtor's active record throughout this reorganization of protecting the rights of stockholders, Debtor's support of this Plan is the best proof of its voluntary character.

Third, no forfeiture is involved in this reorganization. Unlike the Florida East Coast reorganization, even the preferred and common stockholders' claims are being recognized.[6] The preferred stockholders of the Missouri Pacific are given securities to compensate them in full for the par amount of their stock and accumulated dividends. The claim of the common stock to the remaining equity is recognized even though its voting rights and the number of shares of stock in the reorganized company are on the basis of one for twenty. Thus, the absence of forfeiture importantly and fundamentally distinguishes the Missouri Pacific reorganization from that of the Florida East Coast (*St. Joe* case) in which all of the stockholders' claim and part of the bondholders' claim were wiped out.

Fourth, this reorganization involves consolidation only of subsidiaries of the Missouri Pacific controlled and operated by it prior to bankruptcy as the Missouri Pacific System. These properties have been operated by the same Trustee and by the same principal officers as a system throughout the reorganization proceedings which began in 1933.

The importance of this fundamental factual distinction from the *St. Joe* case is evident from the opening paragraph of Justice Frankfurter's opinion of the Court:

> "The *sole* question for decision in this case is whether the Interstate Commerce Commission has the power under Section 77 of the Bankruptcy Act to submit a plan of reorganization to a district court whereby a debtor railroad would be compelled to merge with another railroad *having no prior connection with the Debtor.*" (p. 299) (Emphasis added)

---

[6] Appendix J, 290 ICC 640, 643.

In the *St. Joe* case, the Atlantic Coast Line, which was not in bankruptcy and which was a total outsider with no prior connection with the Florida East Coast other than as a creditor and connecting carrier, was attempting to absorb, over the protest of the owner of the major interest, the debtor Florida East Coast, as part of the reorganization of the latter. The Supreme Court held that Section 77 could not be used as a vehicle to force a merger of the debtor railroad (Florida East Coast) into an outside railroad (the Atlantic Coast Line) not in bankruptcy. In sharp contrast with the Florida East Coast proceedings, the Debtor and its subsidiaries which are to be consolidated under the pending Plan are all in bankruptcy under Section 77 and have long been operated as the Missouri Pacific Lines.

Accordingly, the *St. Joe* decision affords no greater basis for granting the writ sought by petitioners than existed theretofore. This Court did not overrule or modify prior decisions of the courts and the Commission approving mergers or consolidations of parents and subsidiaries such as proposed herein, nor did it alter in any way prior decisions of the Commission and the courts below approving a system reorganization for this Debtor and its subsidiaries.

The pending Plan is a modification of the 1949 Plan of Reorganization which embodied the same consolidation of the debtors. The 1949 Plan was approved by the District Court and the Court of Appeals affirmed it. In support of petitions to this Court for certiorari, it was argued that "The Commission had no power to impose the consolidation" and that "the requirements of Section 5 of the Transportation Act were consciously ignored by the Commission." This court denied certiorari, 343 U.S.

929.[7] The present petitions seeking to raise only these same objections likewise should be denied.

The Debtor submits that the pending Plan is fair and equitable to all parties and complies with all legal requirements. The contention that this Plan must be submitted to stockholders for a vote under Section 5(11) of the Interstate Commerce Act or under state law[8] in addition to or in lieu of the voting provisions of Section 77 is without foundation. Even if a Section 5(11) assent by stockholders to the consolidation is required, questions as to the absence of such a vote at this point in these proceedings are premature. Section 77(f) of the Bankruptcy Act provides that the consolidation contemplated by the Plan is to be authorized by the Commission only after confirmation. Such authority has not been sought or granted since the order of confirmation is now pending appeal in the Eighth Circuit.

Conclusion.

The petitions should be denied for the reason that they fail to present a conflict of decisions or an important question which should be reviewed by this Court.

Respectfully submitted,

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Dated: December 21, 1955

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[7] See decision of Court of Appeals, Serial Committee and Independent Directors' pet. p. 53.

[8] See Section 77(f) of the Bankruptcy Act.

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Petitioners,

v.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, ET AL.,

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CORRECTION TO

BRIEF OF MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Dated: January 10, 1956

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IN THE

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October Term, 1955

Nos. 567 and 568

CHARLES H. ALBERS, FRANCES M. BLAKELY, C. W. BODEN, AVERY BRUNDAGE, JOHN KATSULOS, MARGARET L. KENT, PAUL E. KLING, THOMAS B. SHEARMAN, JAMES SULLIVAN AND EDITH WESTERCAMP, OWNERS OF CERTAIN SHARES OF NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY; MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL BONDHOLDERS COMMITTEE; AND BOLTON SULLIVAN AND STEWART HUSTON, INDEPENDENT DIRECTORS OF MISSOURI PACIFIC RAILROAD COMPANY,

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BRIEF OF MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Through inadvertence there was omitted from the printed version of our brief the following sentences which we request be added to the second paragraph on page 3:

"It is enough that the parent company, owning as it does 82 percent of its first subsidiary, NOTM, and through

it 100 percent of the second subsidiary, IGN, initiated and approved the merger plan, but here these subsidiaries through their officers participated in the initiation and by their boards of directors ratified and approved the merger plan. Furthermore, the Missouri Pacific, debtor, the Chemical Bank & Trust Company and the reorganization trustee, one of which has the right to vote 82 or 94 percent of the NOTM stock, support the merger plan.[2]"

This correction is filed within the time permitted for the filing of briefs in opposition to the petitions for writs of certiorari.

Respectfully submitted,

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MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL BONDHOLDERS COMMITTEE,
Petitioner,

v.

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, Debtor, *et al.,*
Respondents.

BOLTON SULLIVAN and STEWART HUSTON, Independent Directors of Missouri Pacific Railroad Company,

v.

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, Debtor, *et al.,*
Respondents.

BRIEF OF ALLEGHANY CORPORATION, IN OPPOSITION.

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BRIEF OF ALLEGHANY CORPORATION, IN OPPOSITION.

ARGUMENT

POINT I.

In the case of parent and subsidiary there is no requirement of law that compliance with the various corporate formalities involved must occur at any particular point of the proceedings under Section 77 of the Bankruptcy Act.

We are advised by counsel for the Reorganization Managers that they contemplate that prior to the transfer to the Missouri Pacific Railroad Company of the assets of

any of its subsidiaries, pursuant to the Plan, due corporate action will be taken.

The Order approving the Plan, which was affirmed by the Court of Appeals and which is the subject of this Petition for Certiorari, does not state that further formalities are unnecessary. The Opinion, bearing the same date as the Order, states at 129 F. Supp. 392, 402:

> "There are, apparently, no provisions of either the State law nor the Interstate Commerce Act, or the Bankruptcy Act, that set a time for shareholder approval, or require that it be done before the Commission and the District Court have approved the plan. In fact, the provisions of Section 77 requiring the plan to be submitted to the various classes of claimants after approval support the view that the shareholders should not yet have had the plan submitted to them for approval. I do not find that this is inconsistent with the provisions of subsection (11) of Section 5. See concurring Opinion of Holmes J. in *Atlantic Coast Line Railroad Co. v. St. Joe Paper Co.*, 5th Cir., 216 F. 2d 832, at 837"

Although neither the Federal nor state statutes concerned set a time for appropriate corporation action, and as far as any statutes are concerned, the stockholders vote could take place at any time prior to consummation, this honorable Court, in the case of *St. Joe Paper Co. et al. v. Atlantic Coast Line R. Co.*, 347 U. S. 298 (1954) hereafter referred to as the *St. Joe* case, held that where a corporation in bankruptcy has not proposed that it be merged into another company of which it is not a subsidiary, and the Interstate Commerce Commission proposes a plan under said Section 77 requiring such a merger, this would mean that the later vote of the stockholders, under state statutes, would not be a free vote but would be Hobson's choice. In other words, the stockholders, of the company to be merged, even though they did not wish a merger, would either have to vote for it, or wait many additional years while a new plan, for their company alone, was proposed by the Interstate Commerce Commission and went through the long process of approval and confirmation, a most unattractive alternative. This

doctrine of Hobson's choice was the reason stated by this honorable Court for adding something not found in any statute, namely that the initiation of the merger on behalf of the company to be merged, under the facts of that case, must take place before the plan is proposed by the Commission and started on its long journey through the courts. This reason would have no application in the case of a parent and subsidiary, at least in the case of a subsidiary where the parent owns the percentage of stock required to approve a merger, and we respectfully submit that this is the reason why this honorable Court excluded, from its requirement for prior initiation, the case of an internal reorganization, and confined this doctrine to the situation where a debtor railroad is compelled to merge with another railroad having no prior connection with such debtor.

In the instant case we are concerned only with parent and subsidiaries. Not only did this honorable Court expressly exclude from its opinion the present situation, but the reason it stated for adding, in the case of proposed merger of unrelated companies, a requirement not found in the statutes has no bearing on the instant case.

The latest opinion of this court specifically affirming an order confirming a plan of reorganization under said Section 77 was *R.F.C. v. Denver & R.G.W.R. Co.*, 328 U.S. 495, 66 S. Ct. 1282 (June 10, 1946). This reorganization involved an internal merger. The report and order of the Interstate Commerce Commission approving said merger and other items was not entered until March 26, 1947. (267 I.C.C. 862). There was no suggestion by this court, that in such a reorganization the statutory steps must precede the adoption of the plan by the Interstate Commerce Commission under Section 77, and its approval and confirmation by the various courts.

POINT II.

These two petitioners are raising, in the instant Petition for Certiorari, the identical issue which they raised in their petitions for certiorari filed in 1952 in this same reorganization, which petitions were denied.

We refer to petitions for certiorari filed in the October

term 1951, No. 526 *Missouri Pacific Railroad Company 5¼% Secured Serial Bondholders Committee v. Group of Institutional Investors, et al.*, undated; and petition of Independent Directors, No. 527, *John V. Farrell, III, et al. v. Group of Institutional Investors, et al.*, dated January 10, 1952. These two petitions for certiorari were directed largely to this identical issue and were denied by this honorable Court on April 21, 1952 at 343 U. S. 918. The plan approved in the instant case is merely a modification of the plan which was the basis of said petitions for certiorari filed in the October term 1951. The modification does not consist of changes in the provisions for merger, but consists largely in giving full recognition to the preferred stock and partial recognition to the common stock.

POINT III.

There is no conflict between the decision of the District Court in the instant case and the St. Joe decision.

Petitioners' position that there is a direct conflict between the instant case and the *St. Joe* case is stated as follows (pp. 20-21):

> ". . . It should be noted in this connection, that, for voting purposes, the Commission does not treat MOP as the *owner* of the NOTM stock pledged with the Indenture Trustee. In Footnote 1 to Table No. 1 of the Certificate of Vote (printed herewith as Appendix E) the Commission states:
>
> 'Each $1,000 bond voted in Class 19 (MOP 5¼% secured serial bonds) has been counted as a vote in Class 3 (NOTM capital stock) for 10 shares of stock.'
>
> "From this defacto recognition that MOP is not the real *owner* of some 120,000 shares—approximately 80% of the NOTM stock, the conclusion may be drawn that there is not, and cannot be, a parent subsidiary relationship between the two corporations. If the two corporations are not related, the decisions of the lower courts approving and confirming the Plan are in direct conflict with this Court's opinion in the *St. Joe* case . . ." (italics supplied)

Section 77 (a) of the Bankruptcy Act states in part:

> ". . . Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is *owned*, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which such other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, *and that it desires to effect a reorganization in connection with or as a part of the plan or reorganization* of such other debtor; and upon the filing of such petition, the judge shall enter an order either approving it as properly filed under this section, *if satisfied that such petition complies with this section* and has been filed in good faith, or dismissing it if not so satisfied, and thereupon such court, if it approved such petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to such other debtor . . ." (italics supplied).

The petition of the New Orleans, Texas and Mexico Railway Co., hereinafter referred to as the NOTM, is printed at R. Vol. II, p. 47, and the Order of Court finding that the statutory conditions are met is printed at R. Vol. II, p. 51. Against this Order of Court based on the statutory provision that the Missouri Pacific Railroad Company must "own" a majority of stock of the NOTM, from which order petitioners never appealed, we have petitioners' argument that the Missouri Pacific doesn't "own" the NOTM shares, because a footnote to a certificate of the Interstate Commerce Commission states that a vote for a bond shall also be counted as a vote for certain shares of stock, *for one specific purpose.*

POINT IV.

The order of court to which this petition is directed did not hold that Section 77 is the only statute which must be complied with.

On page 13 in petitioners' Statement of the Case, it is said:

> ". . . In view of the finding by both the Bankruptcy Court and the Court of Appeals that Section 77 is the only statute which must be complied with in these proceedings . . ."

This is not true, as is admitted at page 32 of petitioners' argument, where it is stated:

> "While the opinion of the Bankruptcy Court approving the Plan leaves some doubt as to whether the Court believes that MOP (and NOTM) stockholders should be permitted to vote on the merger at stockholders' meeting in accordance with Section 5,* . . ."

Petitioner then quotes in a footnote part of the district court's opinion on this point, reading as follows:

> "In fact, the provision of Section 77 requiring the plan to be submitted to the various classes of claimants after approval support the view that the shareholders should *not yet* have had the plan submitted to them for approval."

On Page 32 there are also certain quotations from the Confirmation Order, which is not yet before this Court, and has not yet been acted on by the Court of Appeals, and certain conclusions are drawn by petitioners therefrom based on their failure to distinguish between the "plan" and the "merger". If the portions of the Order quoted are taken in connection with their context, it is obvious that the District Court on confirmation held that the *Plan* was legal in all respects and that all requirements in connection with the *Plan* as a *Plan* had been met. This does not mean that there is not a great deal still to be done in order to carry out the Plan. All that the Confirmation Order is concerned with is the "Plan", as is apparent from Sec. 77 (e) of the Bankruptcy Act, under which the hearing was held, and from the order of court setting the hearing. To interpret the order as meaning that no further legal steps need be taken to consummate the reorganization is to give it a meaning which is against all reason. Various steps must

be taken under Missouri law in connection with issuing the new stock and new bonds and debentures and the execution of the new mortgages. Various deeds, releases of various old mortgages and indentures securing new mortgages must be recorded in accordance with the law of the states in which the real estate lies. There is a great deal left for the reorganization managers to do as set forth in the Plan of Reorganization, Section V, second paragraph (R. Vol. V, p. 28) all of which is stated in said paragraph as being "subject to any limitations of law".

That more remains to be done after confirmation of the plan by the court is specifically stated in the order of the Interstate Commerce Commission entered July 29, 1954 (R. Vol. V, p. 30); 290 I.C.C. 477, 673 (1954).

> "*It is further ordered,* That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, lease, sale, *consolidation, or merger of the debtors' properties,* or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, except as provided herein, *or until further appropriate action by this Commission upon confirmation of the plan by the court.*" (italics supplied).

POINT V.

The argument of the Independent Directors that they were not allowed participation is without merit.

The argument of the Independent Directors on this point commences as follows (p. 36):

> "The refusal by the Bankruptcy Court and the Court of Appeals to allow the Independent Directors to participate in the judicial proceedings in which those courts both approved and confirmed the Plan raises important questions. . ."

At the outset, let us see whether there was such a refusal, for if not, the entire point is moot.

In the Approval proceedings in the District Court an objection to their participation was made (R. Vol. I, p. 45).

After discussion the District Court reserved its ruling (R. Vol. I, p. 53). The transcript (R. Vol. I pp. 40-191) shows that Mr. Myers, as counsel for the Independent Directors, was permitted to make objections, cross-examine witnesses, and otherwise participate in the hearing until its termination. The first and only ruling on their participation was over two months later, when the District Court handed down its decision.

In the Approval proceedings in the Court of Appeals the Independent Directors participated as fully as any counsel. Their briefs were permitted to be filed and were studied, and their oral argument was heard. Cf. p. 66 of their Petition for Certiorari.

As to the Confirmation proceedings, the record of the District Court in the Confirmation proceedings is not yet before this Court, but we submit that an examination of such record does not justify the statement that the Independent Directors were refused participation in the judicial proceedings in which the District Court confirmed the Plan. The District Court in its order overruled their printed objections to confirmation in the same way and at the same time as the printed objections of the other objectors.

As to the statement in said petition that the Court of Appeals refused to allow the Independent Directors to participate in the judicial proceedings in the Court of Appeals by which the Court of Appeals confirmed the Plan, this is a strange statement in view of the fact that at the time said petition was filed there had been no judicial proceedings in the Court of Appeals on Confirmation and no one had been refused anything. Further, said petitioners have stipulated, as shown by Appendix D to their brief, (pp. 62-67), that they have filed their Notice of Appeal and caused their appeal to be docketed in the Court of Appeals where they were assigned the number 15,472, and they have stipulated further the nature of their record in the Court of Appeals, what points they rely on, and that the briefs and reply briefs filed by the Independent Directors in the Court of Appeals in their previous appeal from the Order approving the Plan should be offered on their appeal from the Confirmation of the Plan, "and together with the oral argument

on the prior appeals may be duly considered by the Court of Appeals as if filed or made, as the case may be, on said appeals from the Confirmation of the Plan." At page 12 of their petition, petitioners state that this stipulation has been approved by the Court of Appeals.

Even if they had not been permitted to participate, the only issue which they raise in their Petition for Certiorari, (other than their own right to be heard) and the only issue they raised in the court below (other than their right to be heard) was also raised at all stages by the other appellants, and both courts gave full attention to this issue raised and most ably argued by the other appellants as well as these appellants. We refer to the statement of points of the Independent Directors (R. Vol. I, p. 4), and the statement of points of Mr. Biggs' Committee, (R. Vol. I, pp. 1-2), the latter statement being absolutely identical with the former except for not making a point about the status of the Independent Directors. See also the statement of points of Albers, et al., (R. Vol. I, pp. 6-7).

Apparently what the Independent Directors desire is that the Approval proceedings and Confirmation proceedings be reheard just so that they may press items 1 and 2 of the statement of points on which they relied below, which items are absolutely identical with items 1 and 2 of the co-signers of this petition. Even if the Independent Directors were not permitted to argue in either court in either proceeding they could have furnished their arguments to the said co-signers for their use.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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Dated December 30, 1955.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

Nos. 567 and 568

CHARLES H. ALBERS et al., Owners of Certain Shares of NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY; MISSOURI PACIFIC RAILROAD COMPANY 5¼% SECURED SERIAL BONDHOLDERS COMMITTEE; and BOLTON-SULLIVAN and STEWART HUSTON, Independent Directors of MISSOURI PACIFIC RAILROAD COMPANY, *Petitioners,*

v.

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC RAILROAD COMPANY, Debtor, et al., *Respondents.*

BRIEF OF PERCIVAL E. JACKSON ET AL., HOLDERS OF FIRST AND REFUNDING MORTGAGE BONDS OF MISSOURI PACIFIC RAILROAD COMPANY, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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Dated: January 3, 1956

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v.

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Opinions Below

The opinion of the District Court (R. Vol. V, p. 251) is reported at 129 F. Supp. 392 (E. D. Mo. E. D. 1955). The opinion of the Court of Appeals for the Eighth Circuit (R. Vol. VI) is reported at 225 F. 2d 761 (8th Cir. 1955).

The Seventh and Eighth Supplementary Reports of the Interstate Commerce Commission (R. Vol. V, pp. 105, 238) are reported at 290 ICC 477, 674.

Jurisdiction

The jurisdictional requisites are set forth in the petitions.

Statutes Involved

The pertinent provisions of Section 77 of the Bankruptcy Act and Section 5 of the Interstate Commerce Act are set forth in the Petition of the Serial Committee and the Independent Directors at pp. 5-7.

Argument

The legal aspects of the questions which the petitioners represent as meriting the attention of this Court are discussed in the accompanying briefs of the Trustee-Respondent, et al. on which we rely.

We submit this brief in opposition only to point up what should, in our opinion, result in a denial of these applications for a writ since there is here absent any compelling legal question decided below adversely to the public interest.

The original petition for reorganization of this railroad was filed back in 1933. The intervening 22 years have witnessed constant and continuous consideration and reconsideration, including eight supplemental reports of the Interstate Commerce Commission. At this point one might properly quote Judge Learned Hand:

> "I conceive that we have no reason for further prolonging a litigation which, as everybody agrees, has already far exceeded expectation, and which makes sadly ironical the hope that reorganization under Sec. 77 will necessarily be speedier than such reorganizations used to be" (Concurring Opinion in *Old Colony Bondholders* v. *New York, N. H. & H. R. Co.*, 161 F. 2d 413, 431).

The auspices under which these alleged questions are presented to this Court do not ornament them. Of all the numerous representatives of the hundreds of millions of dollars here involved who have appeared herein at one time or another over a period of a quarter of a century to present to the Commission and the Courts all possible legal and factual questions, we now find present but three: one, a committee that has failed to disclose any representation; the second, two self-styled "independent directors" who have neither interest nor standing as defined by law (*Huston* v. *Thompson, Trustee,* 217 F. 2d 308); and the third, a speculative group that has been seeking profit by buying stock during recent years (R. I., pp. 119, 120) and which now hopes for further profit by delaying reorganization beyond May 1, 1956.

There is a compelling public interest here and it is to be found only in consummating this reorganization.

Respectfully submitted,

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Dated: January 3, 1956